

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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JOHN FLYNN, et al., )  
Plaintiffs, )  
v. ) Civil Action No. 05-1020  
SCHNELL CONTRACTING SERVICES, LLC. ) Judge: Ellen S. Huvelle  
Defendant. )  
)

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**DECLARATION OF IRA R. MITZNER**  
**IN SUPPORT OF PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT**

Pursuant to 28 U.S.C. § 1746, I, IRA R. MITZNER, hereby declare as follows:

1. I am a partner with the firm of Dickstein Shapiro Morin & Oshinsky LLP and the counsel of record for the Plaintiffs John Flynn, Dominic Spano, Kenneth Lambert, James Boland, Gerry O'Malley, Joseph Bramlett, Paul Songer, Charles Velardo, Eugene George, Matthew Aquiline, Gregory Hess, Vincent Delazzero and Michael Schmerbeck, ("IPF"), in the above-captioned case. I have personal knowledge of the facts stated herein and, if called to testify as a witness, I could and would competently testify as set forth below.

2. On September 15, 2005, a copy of the complaint was served on Defendant.
3. As of this date, no Answer to the Complaint is reflected on the docket.

4. As set forth in the accompanying Declaration of David Stupar, Defendant owes the following sums to Plaintiffs:

\$	93,197.65	Delinquent contributions due the IPF and IMI for work performed in Locals 4 & 5 NJ
\$	29,473.36	Interest assessed on the above delinquent contributions due the IPF and IMI, calculated at the rate of 15 percent per annum from the Due Date
\$	29,473.36	An additional computation of interest on the above delinquent contributions owed the IPF and IMI, calculated at the rate of 15 percent per annum from the Due Date
\$	18,657.66	Delinquent dues checkoff due the BAC for work performed in Locals 4 & 5 NJ
\$	5,840.76	Interest assessed on the above delinquent dues checkoff calculated at the rate of 15 percent per annum
\$	250.00	Filing fee (for U.S. District Court)
\$	176.85	Process Server's costs
\$	5,659.92	Audit costs
\$	<hr/> 182,729.56	Subtotal

5. Additionally, the Employee Retirement Income Security Act of 1974 ("ERISA") provides for the mandatory award of attorney's fees. ERISA Section 502(g)(2)(D). Plaintiffs' counsel has charged the Fund less than the firm's market rate in this matter for well-intentioned, public-spirited reasons. Counsel for Plaintiffs has offered this reduced fee in order to mitigate financial hardships to the Fund, which provides retirement benefits to members of the International Union of Bricklayer and Allied Craftworkers. We believe that our efforts help to ensure the viability of the Fund

and, in turn, the welfare of those participants and beneficiaries who depend on their pensions for income after retirement.

6. Counsel for the Funds, consistent with the decision of the United States Court of Appeals for the District of Columbia Circuit in *Board of Trustees of the Hotel and Restaurant Employees Local 25 and Employers' Health and Welfare Fund v. JPR, Inc.*, 136 F.3d 794, 800-808 (D.C. Cir. 1998), on remand, 1999 WL 1567733 (D.D.C Sept. 10, 1999), and for the reasons set forth in paragraph 5 above, therefore seeks to recover its market rates in this action rather than the reduced fee charged to the Fund.

7. The fees incurred to date by Dickstein Shapiro Morin & Oshinsky LLP in this action have been calculated according to the normal billing rates in effect currently or at the time services were performed for the Fund, and are as follows:

	<u>Hours</u>	<u>Per Hour</u>	<u>Total</u>
Ira R. Mitzner (Partner)	0.50	\$475.00	\$237.50
Seth Richardson (Paralegal)	1.80	\$120.00	\$216.00
Claudette Elmes (Paralegal)	1.30	\$155.00	\$201.50
Steve Zachary (Paralegal)	<u>6.40</u>	\$90.00	<u>\$576.00</u>
<b>Total</b>	<b>10.00</b>		<b>\$1,231.00</b>

8. The default of Defendant for failure to answer was entered by the Clerk of this Court on November 7, 2005.

9. The total known balance due Plaintiffs by Defendant as of this date is \$183,960.56.

10. We therefore pray for entry of default in favor of Plaintiffs in the amount \$183,960.56.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 11/21/05

  
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Ira R. Mitzner